IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 16464 of 2007(I)

AGAINST THE ORDER IN EP 57/06 IN
OS.127/2004 of PRL.MUNSIFF COURT, PALAKKAD
.....

PETITIONER:

A.S.RAJAGOPAL S/O A.P.SUBRAMANIAN IYER,
14/302, DWARAKA, VIVEKANANDA COLONY,
KUNNATHUMEDU, PALAKKAD DISTRICT.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT:

THE LAKSHMI VILLAS BANK LTD.,
BIG BAZAR, PALAKKAD.

BY ADV. SRI.A.KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE EXECUTION PETITION EP 57/06 IN OS 127/04 ON THE FILES OF THE MUNSIFF COURT,PALAKKAD.**

EXT.P2 **TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITION IN E.A.773/07.**

EXT.P3 **TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITION IN EA.784/07.**

EXT.P4 **TRUE COPY OF THE PETITION IN E.A.774/07.**

EXT.P5 **TRUE COPY THE PETITION IN E.A.785/07.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 16464 OF 2007

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Dated this the 21st day of June, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the Munsiff, Palakkad directing the writ petitioner to be arrested and detain in civil prison in execution proceedings. The plaintiff, Bank had advanced a loan in favour of the defendant in the case and a decree had been passed. When the decree was put into execution, the prayer for arrest of the present writ petitioner was made during the last stage. He did not participated in the proceedings. A proof affidavit was filed by the decree holder which was not controverted by the writ petitioner herein. The Court took note of an application form filed by the respondent at the time of taking loan wherein they have mentioned about some other properties which belong to him. Now, the learned counsel for the writ petitioner would submit that one of the items had been put into auction by another Bank and he is only having a fractional right over the other item. Therefore, he is not

having sufficient means to pay the decree debt and prays for exonerating him from payment. As stated by me earlier the writ petitioner did not go to the box or put in any evidence in support of this contention. But, if the fact is true that he is not having the property which he had shown in the application form it may not be correct to send him to a civil prison. Therefore, I feel this is a fit case where the order has to be set aside and the matter to be remitted back to the execution Court for fresh consideration after affording opportunity to the decree holder as well as the judgment debtor to prove their respective contentions. Since I am setting aside the order under attack I direct other applications need not be considered. The Court may straight away consider the question of means to decide the issue. The Court can dispose of the matter within a period of three months from today and parties shall co-operate. Parties are directed to appear before the executing Court on 19.7.2007.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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